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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,254	07/09/2001	Sadik Tuzun	1193-PCTUS00	4185

7590 02/08/2005

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,254

Applicant(s)

TUZUN ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 24-39,42,44-48,70-76,78-86,91,96-99 and 117 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 70-76,78-86 and 96 is/are allowed.
- 6) ☐ Claim(s) 24,25,36,42,44-47,91 and 97-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to. → 26-35, 37-39, 48, 117
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/2/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed 11/22/04, with respect to the rejection(s) of claim(s) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of prior art below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24,25,36,42,44-47,91,97-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sangwan et al (Pestic. Sci., 1990, 28,331-5). Sangwan teaches a method of applying an essential oil (eugenol) derived from Labiatae family to plants to control nematode infestation of the plants. Sangwan also teaches that other equivalent essential oils can be applied to the plants such as linalool and menthol. See abstract, introduction, Table I. Sangwan does not teach 1 to 1000 ppm of the essential oil being applied to the plants. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of essential oil for plant application. One would have been motivated to do this in order to develop the most effective method of controlling the nematodes. The prior art does not teach the instant methods of application (spraying, fogging or water irrigation) to plant or plant environment such as to the soil surrounding the plant. The prior art also does not teach the instant essential oil

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(eugenol) being applied with another pesticide or carrier. In the absence of unexpected results all methods of application of the instant composition to plants are equivalent. It is obvious that the essential oil will fall onto the plant parts (foliage, stem, etc.) and the soil surrounding the plant when the essential oil is applied to the plant as a whole. It is obvious to combine equivalent essential oils having the expectation that the combination will elicit similar if not the same results as the individual essential oils. It is also obvious to dilute an active, in this case an essential oil, with a carrier prior to delivery of the active. One would have been motivated to do this in order to control the potency of the active.

Claim Objection / Allowable Subject Matter

Claims 26-35,37-39,48,117 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant method of applying an essential oil derived from the Labiatae or Umbellifera family to the plant to repel or kill mites, termites, aphids, and/or ants. Claims 70-76,78-86,96 are allowable. The prior art does not teach or suggest the instant method of applying an essential oil derived from the Labiatae or Umbellifera family to the soil to repel or kill insects.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized flourish at the end.

Alton Pryor
Primary Examiner
AU 1616